



PUBLIC NOTICE

Federal Communications Commission
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DA 10-264
February 19, 2010

**WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON
PETITION FOR DECLARATORY RULING REGARDING INTERPRETATION OF
SECTION 332(c)(3)(A) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED,
AS APPLIED TO FEES CHARGED FOR LATE PAYMENTS**

WTB Docket No. 10-42

Comments Due: April 7, 2010
Reply Comments Due: May 7, 2010

On January 14, 2010, five California consumers (Petitioners) filed a Petition for Expedited Declaratory Ruling asking the Federal Communications Commission (Commission) to interpret Section 332(c)(3)(A) of the Communications Act of 1934, as amended,¹ in response to a referral from the Federal District Court in which Petitioners had filed class action litigation.² Specifically, Petitioners ask the Commission to find that penalty fees imposed on consumers by commercial mobile radio service providers for late payment of their bills are not “rates” under Section 332(c)(3)(A). In addition to this referral, the courts have stayed proceedings in two similar class actions pending the Commission’s resolution of this question.³

Section 332(c)(3)(A) provides that no state or local government shall have authority to regulate the entry of or the rates charged by any commercial mobile service, but it does not prohibit a state from regulating the other terms and conditions of commercial mobile services. Petitioners argue that the late payment fees charged by AT&T Mobility, LLC, Celco Partnership, d/b/a/ Verizon Wireless (Verizon Wireless), Sprint Solutions, and T-Mobile USA (T-Mobile) are “other terms and conditions” of service, and therefore may be regulated under

¹ 47 U.S.C. § 332(c)(3)(A).

² *Barahona v. T-Mobile USA, Inc.*, Case No. C08-1631RSM, Order on Motion to Dismiss or Stay This Action (W.D. Wash., May 15, 2009).

³ *Gellis v. Verizon Communications, Inc.*, Case No. C 07-3679 JSW (N.D. Cal.); *Thomas v. Sprint Nextel Corp.*, Case No. CV 08-4119 THE (N.D. Cal.).

state consumer protection laws. In their pleadings in the pending court cases, Verizon Wireless and T-Mobile have argued that these fees are rates under Section 332(c)(3)(A) and therefore cannot be regulated by the states.

The Wireless Telecommunications Bureau seeks comment on the Petition.

Procedural Matters

Interested parties may file comments on or before **April 7, 2010**, and reply comments on or before **May 7, 2010**. All filings should refer to Docket No. **10-42**. Comments may be filed using (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
 - **People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (Voice), 202-418-0432 (TTY).

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Documents in **Docket No. 10-42**, including a copy of the petition, are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. *See* 47 C.F.R. §§ 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. *See* 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

For further information about this Public Notice, please contact Suzan Friedman at 202-418-1310 or Suzan.Friedman@fcc.gov.